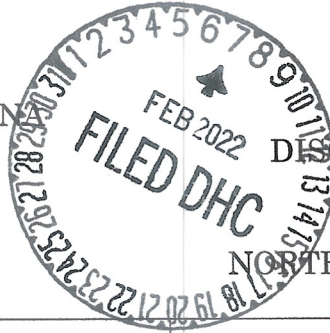


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING
COMMISSION
OF THE
NORTH CAROLINA STATE BAR
21 DHC 21

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

LLOYD T. KELSO, Attorney,

Defendant

SECOND
AMENDED COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar ("State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Lloyd T. Kelso, was admitted to the North Carolina State Bar in 1977, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Rules of Professional Conduct.

3. During all or part of the relevant periods referred to herein, Kelso was engaged in the practice of law in Gastonia, Gaston County, North Carolina.

FIRST CLAIM FOR RELIEF

4. In November 2019, H.S. hired Kelso to represent her in her domestic case, which included child custody and support.

5. H.S. paid Kelso a \$2,500.00 retainer.

6. Following a December 2019 hearing in H.S.'s case, Kelso met H.S. at a restaurant.

7. While at the restaurant, Kelso flirted with H.S. and kissed her.
8. From that point forward, most of Kelso's communications with H.S. were flirtatious, romantic, or sexual.
9. Kelso proposed that he and H.S. could go on romantic trips together and mused about whether they could love each other.
10. Kelso sent H.S. graphic messages, explicit propositions, one or more semi-nude photos of himself, and at least one photograph of his genitals.
11. Kelso recognized that his desire for a sexual and romantic relationship with H.S. created a potential conflict of interest, telling H.S. that "if she felt any type of conflict existed, she should have independent legal advice at no cost to her."
12. Kelso did not obtain H.S.'s informed consent, confirmed in writing, to the potential conflict of interest created by his personal interest in pursuing a sexual and romantic relationship with her.
13. During the representation, Kelso gave H.S. \$500.00 to buy household items, permitted H.S. to use his credit card, and wrote her a check for \$8,000.00.
14. H.S. resisted Kelso's efforts to persuade her to engage in a sexual relationship, and ultimately sought other counsel to complete her case.
15. Upon receiving a report of the conduct described above, the State Bar opened grievance file no. 20G0573 and sent Kelso a Letter of Notice notifying him of the grievance and requesting a response.
16. The Letter of Notice in file no. 20G0573 also contained an allegation that Kelso lacked diligence in representing H.S.
17. To support his response to the Letter of Notice, Kelso asked the opposing counsel in H.S.'s domestic case to execute an affidavit rebutting the allegation that Kelso did not adequately advocate for H.S.
18. In connection with his request for an affidavit, Kelso sent opposing counsel a copy of the Letter of Notice containing all the allegations against Kelso, including the allegation that he provided substantial financial assistance to H.S.
19. For opposing counsel to provide the requested affidavit, which was limited to rebutting the allegation that Kelso did not diligently represent H.S., it was not necessary for Kelso to reveal the other information about the representation contained in the Letter of Notice.

20. Kelso's disclosure of this confidential information was adverse to H.S.'s interests.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- (a) By continuing to represent H.S. in her domestic case while also pursuing a romantic and sexual relationship with her, Defendant represented a client under circumstances where the representation might be materially limited by his personal interests in violation of Rule 1.7(a)(2);
- (b) By sending graphic messages, explicit propositions, and pictures of his naked body to H.S., Defendant attempted to engage in sexual relations with a current client in violation of Rule 8.4(a);
- (c) By giving H.S. money and allowing her to use his credit card, Defendant provided financial assistance to a client in violation of Rule 1.8(e); and
- (d) By disclosing to opposing counsel that he had given H.S. money when that disclosure was not reasonably necessary to defend against allegations that Defendant engaged in misconduct, Defendant revealed confidential client information in violation of Rule 1.6(a).

SECOND CLAIM FOR RELIEF

21. Paragraphs 1 through 3 are re-alleged and incorporated herein.

22. Kelso represented P.H. in his domestic case from the fall of 2019 until August 2021.

23. In or around November 2019, Kelso exchanged messages with P.H. via Facebook messenger.

24. In those messages, Kelso initiated discussion of one of his law firm employees, noting she "makes me horny."

25. Kelso told P.H. that the employee was married but speculated that she might be interested in having sex with two men at the same time.

26. Kelso mused about whether the employee would engage in "double penetration" with P.H. and Kelso, opining that "she might need some liquor first lol."

27. In those messages, Kelso also told P.H. about the duration of his erections and offered graphic descriptions of his girlfriend's genitals, breasts, and orgasmic response.

28. On the website for his law practice, Kelso states that he is a member of the Christian Legal Society (an organization of lawyers "who view the practice of law as a ministry") and the founding member of the Christian Family Law Association, Inc., a nonprofit "whose members are devoted to conducting their family law practices as ministries to the glory of God."

29. The statements on Kelso's website described in paragraph 28 above emphasize Kelso's identification as a Christian and indicate to the public that Kelso conducts his family law practice as a ministry to the glory of God.

30. Because Kelso engages in gratuitous sexually explicit communications with clients (as alleged in paragraphs 24 through 27 above and in the First Claim for relief), the statements about Kelso's law practice referenced in paragraph 28 above are misleading.

31. On 3 January 2022, Kelso submitted to the State Bar his response to the Letter of Notice in grievance file no. 21G0797.

32. The Letter of Notice in grievance no. 21G0797, required Kelso to respond to the allegation that he engaged in the communications described in paragraphs 24 through 27 above.

33. In his response to grievance no. 21G0797, Kelso stated that he "ha[d] no recollection of ever having the conversation with a male client that is alleged."

34. Kelso's statement that he had no recollection of the sexually explicit communications described above was false, as he had discussed the messages with P.H. approximately four months before he submitted his response to the State Bar.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- (a) By holding out to the public that he conducts his family law practice as a ministry to the glory of God when he in fact engages in gratuitous sexually explicit communications with his clients, Defendant made a misleading communication about himself or his services in violation of Rule 7.1; and
- (b) By falsely claiming to the State Bar that he had no recollection of engaging in the sexually explicit communications described above,

Defendant made a false statement of material fact in connection with a disciplinary matter in violation of Rule 8.1(a).

THIRD CLAIM FOR RELIEF

35. Paragraphs 1 through 3 are re-alleged and incorporated herein.

36. In November 2019, Kelso provided M.M. advice and assistance in issuing stock from a corporation owned by M.M.

37. By providing advice and assistance regarding the stock issuance, Kelso represented either M.M. or her corporation.

38. In connection with the stock issuance, Kelso purchased 500 shares of stock in M.M.'s company for \$10,000.00 and assumed the roles of Vice-President and Secretary of M.M.'s company.

39. Kelso did not advise M.M. in writing of the desirability of seeking the advice of independent legal counsel regarding the agreements through which Kelso purchased stock in M.M.'s company and assumed officers' roles in the company.

40. Kelso did not obtain M.M.'s informed consent, in a writing signed by M.M., to the essential terms of the agreements through which Kelso purchased stock in M.M.'s company and assumed officers' roles in the company, including whether Kelso was representing M.M. and/or the company in connection with the agreements.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows: By providing legal advice and assistance in a matter in which he also acquired an ownership interest in M.M.'s company, Defendant engaged in a business transaction with a client in violation of Rule 1.8(a).

FOURTH CLAIM FOR RELIEF

41. Paragraphs 1 through 3 are re-alleged and incorporated herein.

42. Kelso represented V.S. in a personal injury claim arising out of a motorcycle accident.

43. Kelso's fee agreement with V.S. stated that if the client discharged Kelso after a settlement offer was communicated to the client, and the client thereafter recovered on the claim, the client would still pay Kelso the full contingent fee set forth in the contract.

44. This provision in Kelso's fee agreement created a disincentive for the client to choose to be represented by other counsel.

45. Kelso's fee agreement with V.S. also provided that if the client discharged Kelso after a settlement offer was communicated to the client, "any attorney fees or expenses that are owed to the firm shall constitute a lien against the Client's claim which Client agrees shall be paid by the insurer and/or any subsequently hired attorney at the time the Client recovers on the claim."

46. The language in Kelso's fee agreement set forth in paragraph 45 describes an attorney charging lien, which is prohibited by North Carolina law under the circumstances set forth in the fee agreement.

47. V.S.'s case was settled for \$30,000.00 in April 2020.

48. V.S. came to Kelso's office and reviewed a settlement statement reflecting that he would receive \$10,000.00, Kelso would receive \$10,000.00 as his contingent fee, and the remaining \$10,000.00 would be held in trust to pay V.S.'s medical providers.

49. On the second page of the settlement statement, V.S. signed a certification acknowledging, among other things, that Kelso would hold \$10,000.00 for payment of V.S.'s medical bills and medical liens.

50. One of Kelso's employees notarized V.S.'s signature on the settlement statement certification.

51. After V.S. signed the settlement statement certification and his signature was notarized, Kelso altered the first page of the settlement statement to reflect that

(a) an additional \$1,466.80 would be paid to Kelso as reimbursement for costs and expenses of litigation; and

(b) the amount held in trust for payment of V.S.'s medical bills and liens would be \$8,533.20.

52. After V.S. signed the settlement statement certification and his signature was notarized, Kelso altered the content of the certification on the second page of the settlement statement so it stated that \$8,533.20 (not \$10,000.00) would be held in trust for payment of V.S.'s medical bills and medical liens.

53. Kelso did not obtain V.S.'s consent prior to making these alterations to the signed, notarized settlement statement.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- (a) By including in his fee agreement provisions indicating that under certain circumstances the client would be obligated to pay the entire contingent fee even if the client discharged Kelso prior to recovering on the claim, Defendant engaged in conduct prejudicial to the administration of justice (by interfering with clients' right to freely choose their counsel) in violation of Rule 8.4(d);
- (b) By including in his fee agreement a provision indicating that under certain circumstances Kelso would have a charging lien on the client's recovery even if the client discharged Kelso prior to recovering on the claim, Kelso made an agreement for an illegal fee in violation of Rule 1.5(a); and
- (c) By altering a settlement statement that had already been signed and notarized, Defendant engaged in conduct involving dishonesty or misrepresentation in violation of Rule 8.4(c).

FIFTH CLAIM FOR RELIEF

54. Paragraphs 1 through 3 are re-alleged and incorporated herein.

55. Prior to August 2018, Kelso maintained an attorney trust account with South State Bank (formerly Park Sterling Bank), ending in -1862 ("old trust account").

56. Kelso did not perform monthly reconciliations of the old trust account.

57. Kelso did not maintain complete accurate client ledgers for the old trust account reflecting all receipts and disbursements of entrusted funds on behalf of each client.

58. Kelso did not always identify the client on whose behalf a deposit was made into the old trust account.

59. Kelso did not review monthly bank statements and cancelled checks for the old trust account.

60. Kelso did not perform quarterly reviews of random representative transactions in the old trust account.

61. Kelso did not perform quarterly three-way reconciliations of the old trust account.

62. When Kelso received payments from clients via credit card, he incurred merchant service fees for processing the credit card payments.

63. The merchant service fees were an operating cost of Kelso's law firm.
64. From approximately June 2017 through August 2018, merchant service fees for client payments made by credit card were debited from the old trust account.
65. In November 2017, Kelso made a corrective deposit of \$704.20 into the old trust account to replenish client funds that had been used to pay merchant service fees.
66. At the time he made the corrective deposit in November 2017, Kelso did not take any action to ensure that merchant service fees would no longer be debited from the old trust account.
67. From approximately June 2017 through August 2018, Kelso used more than \$1,200.00 of entrusted client funds without client authorization to pay merchant service fees for the benefit of Kelso's law firm.
68. On multiple occasions Kelso disbursed more funds from the old trust account on behalf of a client than he had in trust for that client.
69. As of 29 June 2018, thirty-seven of Kelso's clients had negative balances in the old trust account due to over-disbursements. As a result of these over-disbursements, the balance in Kelso's old trust account on that date was approximately \$17,300.00 less than the total amount of client funds he should have been holding in trust.
70. In July or August 2018, a recently terminated employee of Kelso's law firm stole \$3,000.00 from the old trust account by forging Kelso's signature on a trust account check.
71. Upon discovery of the theft in August 2018, Kelso opened a new attorney trust account with South State Bank, ending in -9990 ("new trust account").
72. Kelso transferred his clients' entrusted funds from the old trust account into the new trust account and closed the old trust account.
73. Kelso did not replenish the \$3,000.00 deficit in the old trust account caused by the theft before he transferred clients' entrusted funds into the new trust account.
74. Kelso did not promptly deposit \$3,000.00 into the new trust account to offset the amount of entrusted funds that had been stolen.
75. Kelso did not deposit \$3,000.00 into the new trust account to offset the amount of entrusted funds that had been stolen until December 2020.

76. From August 2018 through December 2020, merchant service fees for client payments made by credit card were debited from the new trust account.

77. From August 2018 through December 2020, Kelso used at least \$2,800.00 of entrusted client funds without authorization to pay merchant service fees for the benefit of Kelso's law firm.

78. Kelso did not perform monthly reconciliations of the new trust account.

79. Kelso did not maintain complete accurate client ledgers for the new trust account reflecting all receipts and disbursements of entrusted funds on behalf of each client.

80. Kelso did not always identify the client on whose behalf a deposit was made into the new trust account.

81. Kelso did not review monthly bank statements and cancelled checks for the new trust account.

82. Kelso did not perform quarterly reviews of random representative transactions in the new trust account.

83. Kelso did not perform quarterly three-way reconciliations of the new trust account.

84. On multiple occasions Kelso disbursed more funds from the new trust account on behalf of a client than he had in trust for that client.

85. When Kelso disbursed more funds on behalf of a client than he had in trust for that client, he used other clients' entrusted funds for the benefit of the client for whom he over-disbursed.

86. Kelso was not authorized to use other clients' entrusted funds for the benefit of the clients for whom he over-disbursed from his trust accounts.

87. Kelso contends that the over-disbursements from his old and new trust accounts occurred because his staff to deposit entrusted funds received from clients into other accounts rather than the trust account.

88. Kelso did not have in place measures giving reasonable assurance that the conduct of his employees was compatible with his professional obligations regarding trust accounting.

89. Kelso did not make reasonable efforts to ensure that the conduct of his staff in handling entrusted funds was compatible with his professional obligations.

90. As of 31 October 2021, more than thirty-seven of Kelso's clients had a negative balance in the new trust account due to over-disbursements.

91. As of 31 October 2021, there were thirty-five clients whose entrusted funds had remained in the new trust account with no change in the balance since it was opened in August 2018. Kelso had not rendered accountings at least annually to these clients for whom he continued to hold entrusted funds.

92. As of 28 November 2021, the balance in Kelso's new trust account was at least \$31,847.90 less than the total amount of client funds he should have been holding in trust.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

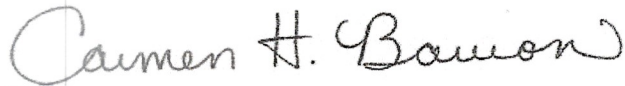
- (a) By failing to deposit all entrusted client funds into a trust account, Defendant failed to properly deposit, disburse, and distribute entrusted funds in violation of Rule 1.15-2(a) and failed to deposit entrusted funds into a trust account in violation of Rule 1.15-2(c);
- (b) By using clients' entrusted funds without authorization to pay merchant service fees and to cover over-disbursements made for the benefit of other clients, Defendant used entrusted funds for the benefit of someone other than the beneficial owner of the funds in violation of Rule 1.15-2(k);
- (c) By allowing client funds to remain in the trust account with the balance unchanged for more than three years, Defendant failed to promptly pay or deliver property to which the client was entitled in violation of Rule 1.15-2(n) and failed to account for entrusted funds at least annually in violation of Rule 1.15-3(e);
- (d) By failing to always identify the client on whose behalf funds were deposited into the trust account Defendant violated Rule 1.15-3(b)(1);
- (e) By failing to maintain complete accurate client ledgers Defendant violated Rule 1.15-3(b)(5);
- (f) By failing to perform monthly and quarterly reconciliations of his trust accounts Defendant violated Rule 1.15-3(d);
- (g) By failing to conduct any of the required trust account reviews Defendant violated Rule 1.15-3(i); and

- (h) By failing to put in place measures giving reasonable assurance that his nonlawyer employees' conduct was compatible with his professional obligations and failing to ensure that his employees' conduct was compatible with his professional obligations, Defendant violated Rule 5.3(a) and (b).

WHEREFORE, Plaintiff prays that:

- (1) Disciplinary action be taken against Defendant in accordance with N.C. Gen. Stat. § 84-28 as the evidence on hearing may warrant;
- (2) Defendant be taxed with the administrative fees and costs permitted by law in connection with this proceeding; and
- (3) For such other and further relief as is appropriate.

This the 7th day of February, 2022.



Carmen Hoyme Bannon, Deputy Counsel
State Bar No. 33998
The North Carolina State Bar
P.O. Box 25908
Raleigh, NC 27611
919-828-4620
Attorney for Plaintiff

Signed pursuant to 27 N.C. Admin. Code
§ 1B.0113(m) and § 1B.0105(a)(10).



Matthew W. Smith, Chair
Grievance Committee